OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 30, 2002

Mr. John M. Fultz
Fultz & Davis
P.O. Box 868
Navasota, Texas 77868

OR2002-5490

Dear Mr. Fultz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169976.

The Navasota Police Department (the "department"), which you represent, received a request for copies of six categories of information as follows:

(1) mobile data terminal transmissions, dispatch tapes and logs, 911 tapes, and calls slips pertaining to a specified offense;

(2) writings and recordings pertaining to "law enforcement's routine investigative procedures for the offense of delivery/possession of controlled substance, and the "renaissance Project" buy/bust operation";

(3) law enforcement records pertaining to the specified offense;

(4) number of years a specified department officer has worked on the police force;

(5) disciplinary actions and [sic] or grievances filed within the department and [sic] or by an independent outside entity; and

(6) "psychological evaluation, reports, etc. pertaining to" the specified department officer.

You claim that some of the requested information is excepted from disclosure pursuant to sections 552.102 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that the department did not submit any responsive information to us other than the information that is responsive to the portions of the request pertaining to the specified offense. We, therefore, presume that the department has already provided the requestor with this other information to the extent that it exists. If not, the department must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

However, we caution the department that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. Prior to releasing this other information, the department should ensure that it does not contain any such confidential information.

You claim that the requested information that pertains to the specified offense is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the matter associated with the information at issue relates to a case that is currently under investigation and pending in the Grimes County Court. Therefore, we conclude that the release of the submitted information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a).

However, we note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston,* 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the department may withhold the submitted information from disclosure pursuant to section 552.108 of the Government Code. Because we base our ruling on section 552.108, we need not address the applicability of your other claimed exception to disclosure.

In summary, with the exception of basic information that must be released to the requestor, the department may withhold the submitted information from disclosure pursuant to section 552.108(a)(1) of the Government Code. The department must release the entirety of the remaining requested information to the requestor to the extent that it exists and has not already been provided to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

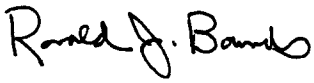
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 169976

Enc. Submitted documents

cc: Mr. Jonathan H. Cox
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(w/o enclosures)